

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

GREGORY FOX and RITA FOX, individually  
and as parents to C.F.,

Plaintiffs,

v.

PENDER MAKIN, MAINE SCHOOL  
ADMINISTRATIVE DISTRICT 51, JEFFREY  
PORTER, SALLY LOUGHLIN, and COREY  
MUNSEY,

Defendants.

Civil Action No. 2:22-cv-00251-GZS

**RESPONSE OF COMMISSIONER MAKIN TO PLAINTIFFS'  
LETTER DATED MAY, 22, 2023, AND SUPPLEMENTAL AUTHORITY**

Defendant Pender Makin, Commissioner of the Maine Department of Education, (Commissioner) hereby responds to the Court's May 26, 2023, order, ECF No. 76, instructing her to address the impact of Plaintiffs' May 22, 2023, letter, ECF No. 74, and the First Circuit's decision in *Lowe v. Mills*, --- F.4th ---, 2023 WL 3642081 (1st Cir. May 25, 2023), on her Motion to Dismiss the Amended Complaint, ECF No. 50.

Based on the decision in *Lowe*, the Commissioner hereby withdraws her Fed. R. Civ. P. 12(b)(6) motion to dismiss as to the declarative and injunctive relief sought by Plaintiffs in Count I of their Amended Complaint, ECF No. 45.

Based on the decision in *Lowe* and Plaintiffs' May 22, 2023, letter, the Commissioner views the following portions of her Motion to Dismiss as remaining for the Court's decision:

1) official-capacity and personal-capacity damage claims brought against the Commissioner as to

Counts I and II of the Amended Complaint; and 2) claims for declarative and injunctive relief against the Commissioner in Count II of the Amended Complaint.

DATED: June 5, 2023

Respectfully submitted,

AARON M. FREY  
Attorney General

/s/ Kimberly L. Patwardhan  
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2023, I electronically filed this document and any attachments with the Clerk of the Court using the CM/ECF system; that the same will be sent electronically to registered participants as identified in the CM/ECF electronic filing system for this matter.

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